

AMENDED IN ASSEMBLY APRIL 8, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 245

Introduced by Assembly Member Cunneen
(Coauthors: Assembly Members Leach, Oller, Robert
Pacheco, and Zettel)

February 1, 1999

An act to amend Sections 12022, 12022.5, and 12022.9 of, and to repeal Section 12022.55 of, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 245, as amended, Cunneen. Sentencing.

(1) Under existing law, any person who is armed with a firearm, or personally uses a deadly or dangerous weapon, in the commission or attempted commission of a felony shall, upon conviction, be punished by an additional term of one year, except as specified.

This bill would increase the term of imprisonment for these sentence enhancements to one, 2, or 3 years if the person is armed with a firearm, and 3, 4, or 5 years if the person personally uses a deadly or dangerous weapon, in the commission or attempted commission of a felony.

(2) Existing law, as recently interpreted by the California Supreme Court, provides that imposition of a sentencing enhancement for personal use of a firearm is mandatory where the underlying offense is assault with a firearm. Existing law, also as interpreted by the California Supreme

Court, further provides that the court has no authority to strike a sentencing enhancement for personal use of a firearm.

This bill would make conforming changes consistent with these decisions of the California Supreme Court, and would provide that these changes are intended to be declaratory of existing law.

~~(3) Existing law provides that any person who, during the commission or attempted commission of a felony, knows or reasonably should know that the victim is pregnant, and who, with intent to inflict injury, and without the consent of the woman, personally inflicts injury upon a pregnant woman that results in the termination of the pregnancy shall be punished by an additional term of imprisonment in the state prison for 5 years.~~

~~This bill would, for purposes of this provision, delete the requirement that the person act with the intent to inflict injury.~~

~~(4)~~ This bill would make technical changes that consolidate other provisions of law or delete language that is duplicative of other provisions of law.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12022 of the Penal Code is
2 amended to read:
3 12022. (a) (1) Except as provided in subdivision (c),
4 any person who is armed with a firearm in the commission
5 or attempted commission of a felony shall, in addition and
6 consecutive to the punishment prescribed for the offense
7 of which the person has been convicted, be punished by
8 an additional term of imprisonment in the state prison for
9 one, two, or three years, unless the arming is an element
10 of that offense. This additional term shall apply to any
11 person who is a principal in the commission or attempted
12 commission of a felony if one or more of the principals is
13 armed with a firearm, whether or not the person is
14 personally armed with a firearm.



1 (2) Except as provided in subdivision (c), if the
2 firearm is an assault weapon, as defined in Section 12276,
3 or a machinegun, as defined in Section 12200, the
4 additional term described in this subdivision shall be
5 three years whether or not the arming is an element of
6 the offense of which the person was convicted. The
7 additional term provided in this paragraph shall apply to
8 any person who is a principal in the commission or
9 attempted commission of a felony if one or more of the
10 principals is armed with an assault weapon or
11 machinegun whether or not the person is personally
12 armed with an assault weapon or machinegun.

13 (b) Any person who personally uses a deadly or
14 dangerous weapon in the commission or attempted
15 commission of a felony shall, in addition and consecutive
16 to the punishment prescribed for the offense of which the
17 person has been convicted, be punished by an additional
18 term of imprisonment in the state prison for three, four,
19 or five years, unless use of a deadly or dangerous weapon
20 is an element of that offense.

21 When a person is found to have personally used a
22 deadly or dangerous weapon in the commission or
23 attempted commission of a felony as provided in this
24 subdivision and the weapon is owned by that person, the
25 court shall order that the weapon be deemed a nuisance
26 and disposed of in the manner provided in Section 12028.

27 (c) Notwithstanding the enhancement set forth in
28 subdivision (a), any person who is personally armed with
29 a firearm in the commission or attempted commission of
30 a violation of Section 11351, 11351.5, 11352, 11366.5,
31 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the
32 Health and Safety Code, shall, in addition and
33 consecutive to the punishment prescribed for that
34 offense of which the person has been convicted, be
35 punished by an additional term of imprisonment in the
36 state prison for three, four, or five years.

37 (d) For the enhancements provided in this section,
38 the court shall impose the middle term unless there are
39 circumstances in aggravation or mitigation. The court

1 shall state the reasons for its enhancement choice on the
2 record at the time of sentencing.

3 SEC. 2. Section 12022.5 of the Penal Code is amended
4 to read:

5 12022.5. (a) Except as provided in subdivision (b),
6 any person who personally uses a firearm in the
7 commission or attempted commission of a felony shall, in
8 addition and consecutive to the punishment prescribed
9 for the offense of which the person has been convicted,
10 be punished by an additional term of imprisonment in the
11 state prison for 3, 4, or 10 years, unless use of a firearm is
12 an element of that offense.

13 (b) Notwithstanding subdivision (a), any person who
14 personally uses an assault weapon, as specified in Section
15 12276, or a machinegun, as defined in Section 12200, in the
16 commission or attempted commission of a felony, shall, in
17 addition and consecutive to the sentence prescribed for
18 the offense of which the person has been convicted, be
19 punished by an additional term of imprisonment in the
20 state prison for 5, 6, or 10 years.

21 (c) For the enhancements provided in this section, the
22 court shall impose the middle term unless there are
23 circumstances in aggravation or mitigation. The court
24 shall state the reasons for its enhancement choice on the
25 record at the time of sentencing.

26 (d) The additional term provided by this section shall
27 be imposed in cases of assault with a firearm under
28 Section 245, or assault with a deadly weapon with a
29 firearm under Section 245, or murder if the killing was
30 perpetrated by means of shooting a firearm from a motor
31 vehicle, intentionally at another person outside of the
32 vehicle with the intent to inflict great bodily injury or
33 death.

34 (e) When a person is found to have personally used a
35 firearm, an assault weapon, or a machinegun in the
36 commission or attempted commission of a felony as
37 provided in this section and the firearm, assault weapon,
38 or machinegun is owned by that person, the court shall
39 order that the firearm be deemed a nuisance and
40 disposed of in the manner provided in Section 12028.

(f) Notwithstanding Section 1385 or any other provision of law, the court shall not strike any allegation, admission, or finding under this section.

SEC. 3. Section 12022.55 of the Penal Code is repealed.

SEC. 4. Section 12022.9 of the Penal Code is amended to read:

12022.9. Any person who, during the commission or attempted commission of a felony, knows or reasonably should know that the victim is pregnant, and who, *with intent to inflict injury, and* without the consent of the woman, personally inflicts injury upon a pregnant woman that results in the termination of the pregnancy shall, in addition and consecutive to the punishment prescribed for the offense of which the person has been convicted, be punished by an additional term of imprisonment in the state prison for five years.

Nothing in this section shall be construed as affecting the applicability of subdivision (a) of Section 187 of the Penal Code.

SEC. 5. (a) In repealing the enhancement in paragraph (2) of subdivision (b) of Section 12022 of the Penal Code, in Section 1 of this act, the Legislature recognizes that the conduct punished under that provision will be subject to punishment under the amended general provision of subdivision (b) of Section 12022 of the Penal Code.

(b) In repealing the enhancement in subdivision (d) of Section 12022 of the Penal Code, in Section 1 of this act, the Legislature recognizes that the conduct punished under that provision will be subject to punishment under the amended general provision of subdivision (a) of Section 12022 of the Penal Code.

(c) The repeal of those provisions of Section 12022 of the Penal Code described in subdivisions (a) and (b) shall not be given any retroactive application, and shall not be construed to benefit any person who committed a crime or received an enhancement or any other punishment while those provisions were in effect.

1 SEC. 6. In repealing the specific provisions of
2 subdivision (e) of Section 12022 of the Penal Code, in
3 Section 1 of this act, and subdivision (f) of Section 12022.5
4 of the Penal Code, in Section 2 of this act, it is not the
5 intent of the Legislature to alter the application of the
6 general provision of subdivision (f) of Section 1170.1 of
7 the Penal Code to the enhancements provided in those
8 sections.

9 SEC. 7. In repealing subdivision (f) of Section 12022
10 of the Penal Code, in Section 1 of this act, it is not the
11 intent of the Legislature to alter the existing authority
12 and discretion of the court to strike the enhancements or
13 to strike the additional punishment for the enhancements
14 provided in that section pursuant to Section 1385 of the
15 Penal Code.

16 SEC. 8. (a) In repealing the enhancement in
17 paragraph (2) of subdivision (a) of Section 12022.5 of the
18 Penal Code, in Section 2 of this act, the Legislature
19 recognizes that the conduct punished under that
20 provision is now subject to greater punishment under
21 subdivision (b) of Section 12022.53 of the Penal Code.

22 (b) In repealing the enhancement in paragraph (1) of
23 subdivision (b) of Section 12022.5 of the Penal Code, in
24 Section 2 of this act, the Legislature recognizes that the
25 conduct punished under that provision is now subject to
26 greater punishment under subdivision (d) of Section
27 12022.53 of the Penal Code.

28 (c) In repealing the enhancement in subdivision (c) of
29 Section 12022.5 of the Penal Code, in Section 2 of this act,
30 the Legislature recognizes that the conduct punished
31 under that provision is now subject to the same
32 punishment under subdivision (a) of Section 12022.5 of
33 the Penal Code.

34 (d) The repeal of those provisions of Section 12022.5 of
35 the Penal Code described in subdivisions (a), (b), and (c)
36 shall not be given any retroactive application, and shall
37 not be construed to benefit any person who committed
38 a crime or received an enhancement or any other
39 punishment while those provisions were in effect.



1 SEC. 9. The amendments to subdivision (d) of
2 Section 12022.5 of the Penal Code, in Section 2 of this act,
3 are intended to be declaratory of existing law, and to
4 conform the language of the statute to the decision of the
5 California Supreme Court in *People v. Ledesma* (1997)
6 16 Cal.4th 90.

7 SEC. 10. The amendments to subdivision (f) of
8 Section 12022.5 of the Penal Code, in Section 2 of this act,
9 to prohibit striking the enhancement, are intended to be
10 declaratory of existing law as contained in *People v.*
11 *Thomas* (1992) 4 Cal.4th 206, and *People v. Ledesma*
12 (1997) 16 Cal.4th 90.

13 SEC. 11. In repealing Section 12022.55 of the Penal
14 Code, in Section 3 of this act, the Legislature recognizes
15 that the conduct punished under that provision is now
16 subject to greater punishment under subdivision (d) of
17 Section 12022.53 of the Penal Code. The repeal of Section
18 12022.55 of the Penal Code shall not be given any
19 retroactive application, and shall not be construed to
20 benefit any person who committed a crime or received
21 an enhancement or any other punishment while that
22 provision was in effect.

23 SEC. 12. In repealing the specific provision relating to
24 pleading the enhancement in subdivision (a) of Section
25 12022.9 of the Penal Code, in Section 4 of this act, it is not
26 the intent of the Legislature to alter the application of the
27 general provision of subdivision (e) of Section 1170.1 of
28 the Penal Code to the enhancement provided in that
29 section.

30 SEC. 13. In repealing the enhancements in
31 paragraphs (1) and (2) of subdivision (b) of Section
32 12022.9 of the Penal Code, in Section 4 of this act, the
33 Legislature recognizes that the conduct punished under
34 those provisions is now subject to greater punishment
35 under subdivision (d) of Section 12022.53 of the Penal
36 Code. The repeal of those provisions of Section 12022.9 of
37 the Penal Code shall not be given any retroactive
38 application, and shall not be construed to benefit any
39 person who committed a crime or received an

1 enhancement or any other punishment while those
2 provisions were in effect.

O

